

United States District Court
Northern District of California

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERNST WILHELM KOHSE,

Defendant.

Case No.: CR 08-00111-1-CW (KAW)

ORDER OF DETENTION PENDING
SUPERVISED RELEASE VIOLATION
HEARING

I. BACKGROUND

On August 8, 2008, Defendant was sentenced to 30 months in custody and three years of supervised release following a conviction for being a felon in possession of a firearm (Class C felony). He was released from prison in March 2011. On June 17, 2011, a Form 12 was filed charging him with testing positive for amphetamines and for driving a vehicle without a valid driver's license. On October 4, 2011, Defendant's supervised release was revoked, and he was sentenced to eight months incarceration, and 21 months of supervised release to expire on March 19, 2014.

On July 10, 2012, a petition for warrant was filed after Defendant failed to report to the probation office in the district to which he was released within 72 hours of release from the custody of the Bureau of Prisons. On October 22, 2012, the presiding judge revoked Defendant's supervised release and imposed a sentence of eight months incarceration, and 20 months of supervised release.

On June 17, 2013, Defendant's probation officer filed a petition alleging that Defendant violated a condition of his supervised release by failing to report to the probation office in the district to which he was released within 72 hours. The Duty Judge found probable cause and issued a no bail warrant for Defendant's arrest on June 17, 2013.

On July 10, 2013, a hearing was held on the Government's motion to detain Defendant pending his supervised release violation hearing. Defendant was present, in custody, and represented by Assistant Public Defender Edward Smock. Assistant United States Attorney James Mann appeared on behalf of the Government. Probation Officer Kevin Thomas was also present. For the reasons stated below, the court orders that Defendant be detained.

II. LEGAL ANALYSIS

Defendant's sentence for the Class C felony included a three year term of supervised release pursuant to 18 U.S.C. § 3583(b). In so ordering, the Court imposed conditions of supervision, including the statutory condition requiring the offender to report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

Defendant was released from FCI Sheridan, Oregon, via Full Term Release on June 3, 2013. He was instructed to report to the U.S. Probation Office in Oakland, California on June 5, 2013, at 9:30 a.m. Defendant failed to report to any of the U.S. Probation Offices in the Northern District of California as of June 17, 2013.

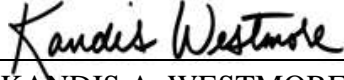
Since Defendant is charged with a supervised release violation, the burden of establishing by clear and convincing evidence that he is not a flight risk or a danger to the community rests with the defendant. Fed. R. Crim. P. 32.1(a)(6); 18 U.S.C. 3143. This is Defendant's third supervised release violation since his initial release in March 2011. The first two violations each resulted in him serving an additional eight months incarceration, the last of which was for this very same violation. For these reasons, the Court finds that Defendant has not established by clear and convincing evidence that he is not a risk of flight or a danger to the community.

Therefore, Defendant shall remain committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. Defendant shall be afforded reasonable opportunity for private consultation with counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections

1 facility in which Defendant is confined shall deliver Defendant to a United States marshal for the
2 purpose of an appearance in connection with a court proceeding.

3 IT IS SO ORDERED.

4 DATED: July 11, 2013


KANDIS A. WESTMORE
United States Magistrate Judge

United States District Court

Northern District of California